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VISA INC., a Delaware corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE WAVE STUDIO, LLC, a New York
Limited Liability Corporation,

Plaintiff,

vs.

VISA INC., a Delaware corporation, and .
DOES 1-100,

Defendants.

Case No.: 3:15-cv-239-JSC

**DEFENDANT VISA INC.'S ANSWER TO
THE WAVE STUDIO, LLC'S COMPLAINT**

Defendant Visa Inc. ("Visa" or "Defendant") hereby answers the correspondingly numbered paragraphs of Plaintiff The Wave Studio, LLC's ("Wave's") Complaint for Copyright Infringement, filed January 16, 2015 (the "Complaint"), as follows:

NATURE OF THIS ACTION

1. Visa admits that Ms. Lee is a photographer. Visa is without information or knowledge sufficient to affirm or deny the remaining allegations in this paragraph, and therefore denies the remaining allegations.

2. Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the same.

3. Visa denies that it has committed blatant acts of copyright infringement, that it has used Plaintiff's photographs to "generat[e] traffic to and revenue for" Visa; and denies that Plaintiff should be awarded any damages. To the extent there are remaining allegations in this paragraph, Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the remaining allegations.

JURISDICTION AND VENUE

4. Visa admits that the Complaint purports to allege causes of action under the copyright laws of the United State, Title 17 of the United States Code.

5. Visa admits that this Court has subject matter jurisdiction over these claims.

6. Visa admits that Visa does business in California, that it is a Delaware corporation, that it has corporate offices in California, and that this Court has personal jurisdiction over Visa. Visa denies the remaining allegations.

7. Visa denies that venue properly lies in this Court or that a "substantial part of the events giving rise to the claims alleged in this Complaint occurred in this judicial District."

THE PARTIES

8. Visa admits that The Wave Studio, LLC is a New York limited liability company. Visa is without information or knowledge sufficient to affirm or deny the remaining allegations in this paragraph, and therefore denies the same.

9. Visa admits that it is a Delaware corporation. Visa denies the remaining allegations.

10. Visa denies that this paragraph contains allegations or averments of fact to which an answer is required.

FACTUAL BACKGROUND

11. Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the same.

12. Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the same.

1 13. Visa is without information or knowledge sufficient to affirm or deny the
2 allegations in this paragraph, and therefore denies the same.

3 14. Visa is without information or knowledge sufficient to affirm or deny the
4 allegations in this paragraph, and therefore denies the same.

5 15. Visa is without information or knowledge sufficient to affirm or deny the
6 allegations in this paragraph, and therefore denies the same.

7 16. Visa is without information or knowledge sufficient to affirm or deny the
8 allegations in this paragraph, and therefore denies the same.

9 17. Visa is without information or knowledge sufficient to affirm or deny the
10 allegations in this paragraph, and therefore denies the same.

11 18. Visa is without information or knowledge sufficient to affirm or deny the
12 allegations in this paragraph, and therefore denies the same.

13 19. Visa is without information or knowledge sufficient to affirm or deny the
14 allegations in this paragraph, and therefore denies the same.

15 20. Visa is without information or knowledge sufficient to affirm or deny the
16 allegations in this paragraph, and therefore denies the same.

17 21. Visa is without information or knowledge sufficient to affirm or deny the
18 allegations in this paragraph, and therefore denies the same.

19 **FIRST CLAIM FOR RELIEF**

20 22. Visa re-alleges and incorporates by reference all of its answers to the allegations
21 contained in the previous paragraphs as though fully set forth herein.

22 23. Visa is without information or knowledge sufficient to affirm or deny the
23 allegations in this paragraph, and therefore denies the same.

24 24. Visa is without information or knowledge sufficient to affirm or deny the
25 allegations in this paragraph, and therefore denies the same.

26 25. Visa denies that Exhibit 2 contains copies of “Defendants’ websites.” Visa is
27 without information or knowledge sufficient to affirm or deny the remaining allegations in this
28

paragraph, and therefore denies the same.

26. Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the same.

27. Visa denies each and every allegation herein.

28. Visa denies each and every allegation herein.

29. Visa is without information or knowledge sufficient to affirm or deny the allegations in this paragraph, and therefore denies the same.

30. Visa denies the alleged conduct and further denies that such conduct rises to the level of willfulness, and further denies the Plaintiff is entitled to statutory damages, exemplary damages, attorneys' fees, or costs.

SECOND CLAIM FOR RELIEF

31. Visa re-alleges and incorporates by reference all of its answers to the allegations contained in the previous paragraphs as though fully set forth herein.

32. Visa denies each and every allegation herein.

33. Visa denies each and every allegation herein.

34. Visa denies each and every allegation herein.

35. Visa denies each and every allegation herein.

36. Visa denies each and every allegation herein.

37. Visa denies each and every allegation herein.

38. Visa denies the alleged conduct and further denies that such conduct rises to the level of willfulness, and further denies the Plaintiff is entitled to statutory damages, exemplary damages, attorneys' fees, or costs.

GENERAL DENIAL

The paragraphs lettered A through F following paragraph 38 of the Complaint set forth Plaintiff's prayer for relief. Visa denies that Plaintiff is entitled to any of the relief requested. Visa denies any allegations not expressly admitted herein.

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AFFIRMATIVE AND OTHER DEFENSES

Visa asserts the following defenses, without regard to whether they are “affirmative” defenses or matters as to which the Plaintiff has the burden of proof:

1. Plaintiff’s Complaint, and each purported cause of action within it, fails to state a claim upon which relief may be granted.

2. Venue is not proper in this judicial district.

3. Plaintiff’s claims are barred by its failure to join indispensable parties.

4. Plaintiff’s claims are barred by an enforceable settlement agreement and release.

5. Plaintiff’s claims are barred by the doctrine of fair use.

6. Plaintiff’s claims are barred by the First Amendment to the United States Constitution.

7. Plaintiff’s claims are barred by express or implied consent, waiver, acquiescence, license, authorization, and estoppel.

8. Plaintiff’s claims are barred by its failure to mitigate damages.

9. Plaintiff’s claims are barred, in whole or in part, by the doctrine of equitable estoppel, waiver, contractual estoppel, laches, and unclean hands.

10. The damages, if any, that Plaintiff has suffered were caused in whole, or in part, by the acts or omissions of Plaintiff and/or its agent(s) and representative(s), or were caused by the acts or omissions of a third party over whom Visa has no control.

11. Plaintiff’s claims are barred due to copyright misuse.

12. Plaintiff’s claims are barred, in whole or in part, because the damages allegedly suffered by Plaintiff, if any, are vague, uncertain and speculative.

13. Plaintiff’s claims are barred to the extent it has engaged in fraud upon the Copyright Office.

14. Plaintiff’s claims are barred to the extent it has forfeited or abandoned its copyrights.

15. Plaintiff’s claims are barred because Plaintiff lacks standing to sue.

16. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot prove that it has suffered any compensable damages.

VISA'S PRAYER FOR RELIEF

Wherefore, Visa prays that the Court:

- A. Enter judgment in favor of Visa and against Plaintiff on all counts;
- B. Award Visa its costs, expenses, and disbursements that it incurs in defending against Plaintiff's claims;
- C. Award Visa the attorneys' fees it incurs in defending against Plaintiff's claims;
- D. Award Visa prejudgment and post-judgment interest; and
- E. Award Visa such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Visa hereby demands a jury trial on all issues so triable.

Dated: May 18, 2015

LEWIS ROCA ROTHGERBER LLP

By: /s/ Michael J. McCue

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2015, I caused a true and accurate copy of the foregoing document entitled DEFENDANT VISA INC.'S ANSWER TO THE COMPLAINT to be filed with the Clerk of the Court using the Court's CM/ECF system, which will send electronic notice of the same to the following counsel of record:

Nate A. Garhart, Esq.
Vijay K. Toke, Esq.
Amanda R. Conley, Esq.
COBALT LLP
918 Parker St., Bldg. A21
Berkeley, California 94710

*Attorneys for Plaintiff
The Wave Studio, LLC*

Dated: this 18th day of May, 2015.

/s/ Rebecca J. Contla

An Employee of Lewis Roca Rothgerber LLP

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